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OFFICE OF LOGISTICS
PROCUREMENT NOTE NO. 12

2 August 1968

CONTRACT REVIEW BOARD
SUMMARY OF ISSUES AND RECOMMENDATIONS

1. The Contract Review Board, through its issues and recommendations, has a broad impact on the procurement procedures of the Agency. The following is provided as an informational digest of the significant issues and recommendations resulting from contracts reviewed by the Board during the first nine months of activity. Detailed information on cases is available from the Chairman, Contract Review Board, if desired.

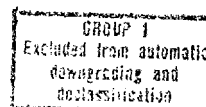
a. Timely and Complete Proposals

The most repetitive omission found in the review of case records was the failure to anticipate the date by which an additional contract was required to permit uninterrupted performance of continuing or follow-on effort in long-term research programs. The results in many of these contracts were late proposals that were hurried and incomplete, delayed requests for programmatic and funding approvals, and the inevitable "deadline" for negotiation and contract action. The Board recommended in several cases that all parties, including the contractor, anticipate the necessary leadtime to effect an orderly completion of the contracting process.

b. Procurement Request Package

In several cases reviewed by the Board, the procurement request package did not include unsuccessful or rejected proposals and did not deal adequately with justification of source selection or the type and results of the evaluative process. Upon inquiry, sufficient supporting data were usually available in background material not forwarded to the Board for review. The consensus of the Board is that the rationale for source selection, including copies of all proposals, should be forwarded for review and ultimate retention in the official contract files. It is recognized that implementation of this recommendation requires the full support of the Project Officers as well as the Contracting Officers.

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c. Incomplete or Non-Revised Work Specifications

Considerable laxity was found on the part of a few Project Officers in forwarding proposals for procurement action which had not been revised to conform to the latest technical understandings between the Project Officer and the proposed contractor's engineer. While not widespread, the Board considered these procurement requests hurried, incomplete, and a potential source of serious trouble.

d. Procurement Team Participation in Negotiation

The Board has been pleased to recognize the extent of joint participation in the contracting process by Project Officers and Contracting Officers. In view of the short period of time the Directorate teams have been operating, there has been noticeable evidence of more cooperation, particularly in the early "requirements-planning" stage.

e. Contractor Independent Research and Development Expense

The Board has reviewed carefully the reasons for reimbursement to any degree of the IR&D expenses of Agency contractors. The Board, recognizing there is no easy or general solution to this problem, has, on occasion, requested that the Contracting Officer question expenses in regard to applicability of the particular IR&D program to the Agency's requirement. In addition, the Contracting Officers have also been requested to include in the procurement justification a rationale for the reimbursement and a statement on the contractor's willingness to grant royalty-free patent license to inventions resulting from the IR&D program.

f. Contractor's Certificate of Current Cost and Pricing Data

The Board noted in several of its earlier cases that there was no record of the Contracting Officers' having obtained the required certificate of current cost and pricing data, which, in the Board's opinion, is necessary and desirable, particularly in light of recent emphasis and new "teeth" in the "truth in negotiations" Procurement Regulations. Contractors can no longer take lightly the matter of this certification, and the Board has recommended that all Contracting Officers insist on and make such use as they can of this certification tool.

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g. Facilities Type Contracts

To better control Government Furnished Equipment (GFE) with contractors holding multiple Agency contracts, the Board, in two cases, recommended that the Contracting Officer consider writing a facilities contract to accommodate accountability for GFE as individual contracts or task orders expire. This is a continuing question which should be considered by all Contracting Officers as they close out old contracts and prepare new contracts purporting to pick up accountability for GFE furnished under the preceding contract.

h. Incentive Contracts

(1) The Board examined numerous contracts that used the incentive fee (or profit) formula, with particular emphasis on the adequacy and applicability of the formula for the purpose intended. The Board was generally receptive toward the use of this type contract when the formula was reasonable, administratively feasible, and contractor motivation appeared necessary and productive. The risks involved in quality cutting by a contractor in order to qualify for cost or delivery-time awards were considered during the review. Although the Board did not recommend disapproval of any incentive-type contract, there are some indications that the use of this type contract has become routine or popular. The Board expressed concern that proper regard for the appropriate use of this type contract is given so that the best interest of the U. S. Government will be served.

(2) Respecting award-fee type of contracts, Board discussions question whether this type of contract is administratively feasible and effective except in larger dollar procurements where it is worthwhile to establish an evaluation (of performance) committee with semiformal procedures.

(3) The Board commented favorably on the use of fixed-price incentive contracts with contractors having poor histories for good budget control. This type of contract establishes a ceiling, grants an incentive for improving budget control, and yet retains to the Contracting Officer the right of administrative and audit surveillance.

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i. Burden Rates

In two cases reviewed by the Board, the use of plant-wide burden rates to assess costs when unusually large amounts of Government-furnished equipment were used in "closed areas" was questioned. The Board suggested that Contracting Officers scrutinize the propriety of paying plant-wide rates in such instances, feeling that the Agency should either provide less GFE or obtain a lower burden rate.

j. Technical Management of Associate-Prime Contractors

While no specific recommendations have been made on the subject, the Board has, in two cases, requested that the Contracting Officer and Project Officer explain to the Board their concepts of management responsibility relationships, as between associate prime contractors, and as between such contractors and the Government's Project Officer and Contracting Officer. In each case, the Board was convinced that the relationships were understood and proper. However, such discussions did indicate the importance of carefully considering these relationships in the early stages of planning and contracting to prevent later problems from arising due to nonassumption of appropriate responsibilities by the various parties.

k. Overrun Funding Amendments

The Board reviewed overrun funding requests that ranged from 15 to 51 percent of the original cost estimates. Additional justifications and explanations were requested in several cases and, in one case where the contractor has proceeded with work without written authority, the Board, although it recommended approval of the overrun, suggested the Contracting Officer forward a letter of dissatisfaction to the contractor. A survey covering overruns for the past three years by industrial contractor was requested by the Board and revealed that this contractor's record was reasonably good, considering the type of work being done and the current state of the art. The Board has and will continue to examine overruns very carefully. To date, no large-scale condemnable situations have been surfaced.

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2. Future summaries of Contract Review Board activities will be issued when warranted. Individual Procurement Notes will be issued covering significant recommendations and actions as they occur.

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